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Nothing herein shall give any customer, assignee, or transferee
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INGA Comments to FCC

does not relieve or discharge that former customer from its obligations on the account and that it remains jointly and severally liable with the new customer for any obligations existing at the time of transfer or assignment.

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- 37. If the obligations transfer from one customer to another at the time of assignment, then what the liabilities of the former customer, CCI, were at the time of assignment are relevant. The assignment from CCI to PSE was ordered in December of 1994. At that time there were no outstanding liabilities on the assigned accounts. There were in fact no outstanding liabilities on these accounts at anytime.

### 38. AT&T then states -

"Moreover as AT&T's customers for all of the locations and all of the traffic generated under the tariffed plans, in terms of transfer of such accounts the petitioners would, but for the attempt to bifurcate the traffic from the underlying plans remain jointly and severally liable with the new customer for all obligations existent at the time of the transfer." (at p. 8, emphasis added.)

AT&T is arguing that if CCI transferred the plan to PSE with the accounts included in the plan, CCI as the former customer would be liable for any obligations that existed at the time of the transfer. This is a given. So what is AT&T's point? Even if the entire plan

## Exhibit H

P. 02



Charles H. Fash S≅nior Attorney

Room 323281 295 North Maple Avenue Basking Ridge, NJ 07820-1001 908 221-8021 FAX 908 953-8360 ATTMAIL Iclash

July 7, 1995

Charles H. Heleim, Esquire Kelein & Waysdorf, P.C. 1850 M Street, N.W., Suite 550 Washindton, D.C. 20036

Re: US Communications, Inc. and Darren B. Swain, Inc.

Dear Mr. Helein:

Your letter of June 27, 1995 to Meric Bloch regarding your above-referenced clients has been referred to me for response. I understand the two concerns raised in your letter to be that ATAT has refused to process a Transfer of Service Authorization ("TSA") transferring substantially all of the locations associated with a CSTP II plan in the name of Darren B. Swain, Inc., to another reseller, and that AT&T has refused to extend the term commitment for the same plan pursuant to AT&T Tariff F.C.C. No. 2, Section 2.5.7. I have spoken to Sharon De Mills, the AT&T Account Manager referenced in your letter, about both of these issues.

With respect to the requested transfer, it is my understanding that Mr. Swain informed Ms. De Mills that his intention was to move all but two locations from the plan in question to another reseller, thus leaving the plan structure technically in place in the name of Darren B. Swain, Inc., but effectively rendering it an empty shell. Mr. Swain did not advise Ms. De Mills that he intended to TRAFFC add new locations to the plan to replace the traffic thus removed. With that background in mind, I will address the partial TSA" issue first in general, and then with respect to your client's express and announced intentions.

The Transfer of Service provision of the tariff addresses the issue of transfer of service, not transfer of "traffic" by moving individual locations from one plan to another. The proper way to move "traffic" (i.e., a subset of locations on a plan) between plans is to submit service orders to delete the locations from one plan and add the locations to another. Your assertion that AT&T has somehow implemented Transmittal No. 8179 despite its withdrawal is incorrect. That tariff filing would have required a customer, seeking to transfer all or substantially all of the locations under a plan to another customer, to use the TSA process to transfer the entire plan.

It appears to AT&T at this juncture that transfer of all but two of the locations as requested by Mr. Swain would render not only the plan, but Darren B. Swain, Inc., an empty shell devoid of assets with which to pay tariffed charges associated with the plan. I understand that your client has been notified that approximately 1.6 million dollars in shortfall charges will be billed to it within the next. several months based on failure to meet its commitment levels. The specific action requested by your client, even had the proper mechanism been employed, would therefore appear to AT&T to be nothing more, and nothing less, than a fraudulent transfer of assets designed to defeat collection by AT&T of its lawfully teriffed charges. Section 2.2.4.A.2. of AT&T Tariff F.C.C. No. 2 prohibits the use of service "with the intent to avoid the payment, either i: whole or in part, of any of the Company's tariffed charged by ... [u] sing fraudulent means or devices, tricks [or] schemes .... In stripping the plan and the corporate entity which owns it in this manner, it appears to AT&T that your client sought to render itself unable either to fulfill its commitments on to pay shortfall charges billed as a result of such inability. AT&T's refusal to countenance -- such a scheme is more than justified, and I would think that you would wish to caution your client against the attempted use of such fraudulent transfers in the future.

Of course, if your client can demonstrate to AT&T's satisfaction an ability to pay shortfall and other charges incurred under its plan even in the absence of the traffic which would otherwise be expected to be generated by the locations to be moved, AT&T would be happy to reconsider its position on this issue. If, for instance, your client is willing to post a deposit or irrevocable letter of credit to guarantee payment of charges expected to accrue through the remainder of the term of the plan, the requested move would no longer appear to be a fraudulent scheme or device to avoid payment of tariffed charges and could presumably go forward utilizing the proper mechanism.

The second issue which you raise goes to your client's request, for an extension of its term commitment pursuant to Section 2.5.7. I understand that this request was received simultaneously with your client's request to transfer service; and with respect to the same plan. It is true that

this section of the tariff does provide for such an extension due to certain specified dauses or "other circumstances beyond the Customer's control..." Your client advanced no rationale whatsoever to Ms. DeMills as to why this provision of the tariff is applicable to the plan in question at this time. Indeed, a fair inference would seem to be that having rendered itself functionally unable to meet its commitments by stripping the plan of traffic, your client now invokes this provision in spite of the fact that it clearly applies only to "circumstances beyond the Customer's control..." If this is true, it is hard to imagine a more inappropriate scenario in which to invoke this provision of the tariff. Again, if your client has any rational reason to advance as to why this extension is appropriate under the tariff, I urge it to do so.

I trust that this letter adequately addresses the concerns raised in your letter.

Very truly yours,

That les Fast

cc: Ms. Sharon L. De Mills

## Exhibit I

# One Stop Financial

55 Main Street, Little Falls, NJ 07424 Tel.: (800) 245-1826 Fax: (800) 338-0409

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**ASSUMPTION OF BTN'S FROM PLAN ID 3357	

ONTO WINBACK & CONSERVE PROGRAM, INC. PLAN I.D.



Version: 2

### **General Terms and Conditions**

### **Transfer or Assignment**

Service, including any associated telephone numbers, may be transferred from Customer to another party only to the extent permitted by applicable laws, rules and regulations, and if both AT&T and Customer consent to the transfer, the proposed new customer satisfies the AT&T eligibility criteria for the Service and any AT&T deposit conditions, and both the current Customer and proposed new customer sign AT&T's specified Transfer of Service Agreement form. The AT&T Transfer of Service Agreement <a href="may require the new customer to assume all of the current customer's obligations and the current Customer to remain jointly and severally liable for any obligations relating to the pre-transfer period.

### ATTACHMENT I

### MATERIAL AVAILABLE FOR PUBLIC INSPECTION

- 1. Fax from Liz Bantle (no title given), to Dave Golden, AT&T, dated Feb. 9, 1995 (handwritten notes of Commission staff redacted).
- 2. Fax (advance) letter from Dave [no surname provided] to R.L. Smith, Tariff Division, addressed to Secretary, FCC, dated Feb. 16, 1995.
- 3. Advance draft pages of a possible correction made by AT&T to its filed material, (Fax) dated Apr. 26, 1995.
- 4. Memo from Colleen Boothby, counsel for Public Service Enterprises of Pennsylvania, Inc. ("PSE"), to Geri Matise and David Nall, Tariff Division, dated Apr. 21, 1995, with attachment (Letter from Thomas Roberts, Customer Service Manager, PSE, to Roxy Malik, Minneapolis Front End Center, dated Apr. 12, 1995.)
- 5. Memo from Colleen Boothby, counsel for Public Service Enterprises of Pennsylvania, Inc. ("PSE"), to Geri Matise and David Nall, Tariff Division, dated Apr. 20, 1995, with attachment (Memo from Sara [no surname provided], New Enterprise Wholesale Services ("NEWS"), to Pat [no surname provided], NEWS, dated Apr. 20, 1995.)

### ATTACHMENT II

### MATERIAL NOT AVAILABLE FOR PUBLIC INSPECTION

- I. Handwritten notes from a conference call or meeting attended by several FCC staff and representatives of AT&T, undated.
- 2. Memo from Tom David, Tariff Division, to David Nall and R.L. Smith, Tariff Division, dated Feb. 27, 1995.
- 3. Personal calendar entries from various FCC staff.

ATET COMMUNICATIONS TARIFF F.C.C. NO. 1 3338p 12th Revised Fage 150 Adm. Rates and Tartiffs Cancels 9th Revised Page 150 2/9/35 Bridgewater, NC 08807 Effective: Istued: 12.

### 6.2.5. Provision of Services (continued)

- B. Installation When installation of a component is required in will be installed subject to the availability of installation personnel and - equipment. Installations will usually be made curing hormal working hours. For ATAT CPTIMUM Service, an Installation Sugrantee is provided as specified in Section 6.17.6. following. For ATAT Justimules GOLD Service, an Installation Guarantee is provided as specified in Section 6.21.5., following.
- C. Maintenance The Company will maintain and repair the services which it provides. For ACAT GFTIXUM Service, a Maintenance Sugrentee is provided as apecified in Section 6.17.5. following. For ATET GustomNet-SOLD Service a Mointehauce Guarantee is provided as specified in Section €.21.5., following.
- D. Hazardous Locations = A Company-provided aggress line will not be furnished at a location the Company considers hamardous (e.g., expicative atmosphere environments). In such cases, the Company, if an requested, will terminate the access line at a mutually agreeable sitemate location. The Customer will then be responsible for extension of the access line to the mararious location.
  - 5.2.6. Transfer or Assignment Custom Natwork Services may be transferred or assigned to a new Costomer, provided that:
  - A. The Custemer of record (former Customer) requests in writing that the Company transfer or assign the service to the new Customer.
  - B. The hew Customer potifies the Company in writing that it agrees to assume all obligations of the former Curtomer at the time of transfer or assignment. These obligations include: (1) all outstanding indeptedness for the service, and (2) the unexpired portion of any explicable minimum. payment period(s), including the unexpired portion of any term of service and respect consistences.
  - C. The service is not interrupted or relocated at the time the transfer or assignment is made.
  - D. The Company agones in writing to the transfer on assignment.

The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. These obligations include: (1) all outstanding indebtedness for the service, and (2) the unexpired portion of any applicable minimum perment period(s), including the unexpired portion of any term of service and usage or 正を作るたなか、企業を制造であるとも(は)。

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Printed in U.S.A.